

Fauquier County Government & Public Schools



Guidelines for Implementation of the Public-Private Education Facilities & Infrastructure Act of 2002, as amended

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1. Introduction

- 1.1 The Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§ 56-575.1 through 56-575.17, ("PPEA") grants "responsible public entities" the authority to enter into public-private partnerships for the development of certain "qualifying projects" if the public entity determines, under criteria established by the PPEA, that such a project serves the public purpose. To serve the public purpose, a proposed PPEA project must fulfill a public need, have a reasonable cost in relation to similar facilities, and provide the project in a timely manner. The PPEA defines "responsible public entity" to include any public entity that "has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement or install the applicable qualifying project". See Virginia Code § 56-575.1.
- 1.2 Either the Fauquier County Government ("County Government") or the Fauquier County School Board ("School Board") can be the "responsible public entity" for a project in Fauquier County, depending upon the nature of the project. Typically, the School Board will be the "responsible public entity" under the PPEA for any project involving only the public schools, and the County Government will be the "affected local jurisdiction" under the PPEA. However, given the special relationship, both financial and otherwise, that exists between the School Board and the County Government, any acceptance and evaluation of proposals tendered to the School Board under the PPEA will require close coordination and cooperation between the School Board and County Government. In proposals not involving the public schools, the County Government will be the "responsible public entity", and School Board's participation will not be required. Also, proposals may be made that are for a "mixed" project (for example, projects including both schools and public parks), where, for certain components, the School Board may be the responsible public entity, and for certain components, the County Government will be the responsible public entity.
- 1.3 Individually negotiated interim agreements and comprehensive agreements between a private entity, as defined in the PPEA, and the responsible public entity or entities, along with the PPEA and these guidelines, will define the respective rights and obligations of the parties.
- 1.4 Although these guidelines provide guidance for application of the PPEA, the version of the PPEA in effect at the time the Interim or Comprehensive Agreement is executed is controlling in the event of any conflict.

2. Applicability of Guidelines

- 2.1 The County Government and the School Board have jointly adopted these guidelines to implement the PPEA by School Board resolution dated March 8, 2004 and by County Board of Supervisors resolution

dated March 15, 2004, and amended (fill in dates). These guidelines apply to all procurements under the PPEA where either the County Government or the School Board is the "responsible public entity" or where the County Government is the "affected public jurisdiction" within the meaning of Virginia Code § 56-575.1. For purposes of these guidelines, unless otherwise indicated, "Board" means the Board of Supervisors of Fauquier County, or the School Board, or both, as applicable, "Chief Administrator" means the County Administrator or the School Superintendent or both, as applicable, and "County" means the County Government or the School Board or both, as applicable.

- 2.2 The PPEA and these guidelines establish requirements in procurements pursuant to the PPEA by the County.
- 2.3 The County Administrator, School Superintendent, and all officers and employees of the County Government and the School Board shall follow the PPEA and these guidelines in any PPEA procurement in which they are involved.
- 2.4 The Chief Administrator may delegate his or her duties under these guidelines.
- 2.5 These guidelines may only be revised by an amendment adopted by both the County Board of Supervisors and the School Board.
- 2.6 The County Administrator shall have overall responsibility and be the primary contact for implementation of these guidelines, with the County Administrator and School Superintendent having responsibility for implementation of these guidelines within the County Government and Public Schools, respectively.

3. Eligible Projects

- 3.1 In order for a project to come under the PPEA, it must meet the definition of a "qualifying project" in the PPEA as amended. The PPEA contains a broad definition of qualifying projects that includes public buildings and facilities of all types, for example:
 - 3.1.1 An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally-related and subordinate facility and land to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
 - 3.1.2 A building or facility that meets a public purpose and is developed or operated by or for any public entity;

- 3.1.3 Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
 - 3.1.4 Utility and telecommunications and other communications infrastructure;
 - 3.1.5 A recreational facility; or
 - 3.1.6 Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.
- 3.2 The examples set forth herein are provided for convenience. The definition of "qualifying project" in the PPEA as of the time in which the procurement concluded by a comprehensive agreement is controlling, and the version of the PPEA then in effect should be consulted to determine what is a "qualifying project".

4. General Provisions

4.1 Proposal Submission

- 4.1.1 A proposal may be either solicited by the County or submitted by a private entity on an unsolicited basis. In either case, the proposal shall be clearly identified as a "PPEA Proposal". To be considered, one original and eight (8) copies of any unsolicited proposal must be submitted along with the applicable fee to the County Purchasing Agent with one additional copy to the County Administrator. Solicited proposals shall be submitted in accordance with the instructions in the applicable solicitation.
- 4.1.2 Proposers will be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein. For unsolicited proposals, unless otherwise specified by the County, the conceptual phase of the proposal shall contain the information specified by paragraph 7.1 of these guidelines, and the detailed phase of the proposal shall contain the information specified at paragraph 7.2 of these guidelines. For solicited proposals, the solicitation and subsequent instructions by the County will prescribe the information that proposals shall contain.
- 4.1.3 Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work

and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The County may request, in writing, clarification of any submission.

- 4.1.4 Representations, information and data supplied in, or in connection with, proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of any proposal, the proposer shall certify that all material representations, information and data provided in support of, or in connection with, its proposal are true and correct. Such certification shall be made by authorized individuals who are principals of the proposer and who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the proposer shall immediately notify the County of the same.
- 4.1.5 The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity securities, or other securities or obligations. Proposals may include, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.
- 4.1.6 The PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private operator, but also benefits to the operator through innovative approaches to project financing, development and use. However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to public use and typically involve facilities critical to the public health, safety and welfare. Accordingly, the County shall continue to exercise full and proper due diligence in the evaluation and selection of private entities for these projects. In this regard, the qualifications, capabilities, resources, and other attributes of a prospective private entity and its whole team shall be carefully examined for every project. In addition, private entities proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience, or other contents of their proposals, including all specific aspects of proposed plans to be performed by the private entity.

4.2 Affected Jurisdictions

Under the PPEA, an "affected jurisdiction" is any county, city or town in which all or a portion of a qualifying project is located. Any private entity submitting a conceptual or detailed proposal to the County must provide any affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery. For an unsolicited proposal, the private entity must provide the affected jurisdictions with a copy of the proposal no later than 5 business days after receiving notice from the County that the County has decided to accept the proposal pursuant to Section 6.1.1 hereof. Any affected jurisdiction shall have 60 days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the jurisdiction's (i) comprehensive plan, (ii) infrastructure development plans, and (iii) capital improvements budget or other government spending plan. The County shall give consideration to comments received in writing within the 60-day period, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the 60-day period for affected jurisdictions to submit comments.

4.3 Proposal Review Fees

- 4.3.1 Solicited Proposals. Proposals solicited by the County that are not in response to an unsolicited proposal will not be subject to proposal review fees unless so indicated in the solicitation. The County may determine at its discretion whether to require proposers to pay review fees for solicited proposals, and if so, the amount of such fees.
- 4.3.2 Unsolicited Proposals. The County will require payment of a review fee by a private entity submitting an unsolicited proposal to the County and by any private entities submitting competing proposals in response to the unsolicited proposal.
- 4.3.3 Review fees are to cover the County's costs of processing, reviewing, and evaluating proposals, including the cost to compare a proposal to any competing proposals. Such costs include, but are not limited to, County staff time, the cost of any materials or supplies expended, the cost of meals and travel related to the review process, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, and financial advisors, used by the County in its sole discretion to assist in processing, reviewing, and/or evaluating the proposal. Such fees generally will be in the amount necessary to completely cover all of the County's costs. Review fees shall include the initial review fee submitted with the proposal, and additional fees as required to cover the costs specified in this subparagraph.

- 4.3.3.1 Initial fee. Payment of an initial fee must accompany the submission of the proposal to the County in order for the County to proceed with its review. Unless otherwise indicated in the solicitation, initial fees shall be paid in accordance with the following table, with the fee percentages applied to the total estimated cost of the proposed project:

Review Stage	Fee	Minimum	Maximum
Conceptual	$\frac{1}{4}$ of 1%	\$2,000	\$25,000
Detail	$\frac{1}{4}$ of 1%	\$5,000	\$50,000

The Chief Administrator may specify a different initial fee amount in a solicitation issued under paragraph 5 of this policy or in a Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals prepared under paragraph 6.1.2 of this policy. Fees shall be submitted with the proposals for each corresponding phase in the form of a cashier's check made payable to: Treasurer, Fauquier County.

- 4.3.3.2 Additional fees. Additional fees shall be paid by proposers throughout the processing, review, and evaluation of the proposals, if and as the County requires, based upon costs in excess of initial review fees assessed that the County reasonably anticipates incurring. The County may impose additional fees on proposers selected for detailed-phase consideration as a condition of consideration of their detailed-phase proposals. The County will notify the proposers concerned of the amount of such additional fees. Proposers must promptly pay such additional fees before the County will continue to process, review, and evaluate the proposer's proposal.

- 4.3.3.3 Reimbursement of excess fees paid. In the event the total fees paid by proposers for a project exceed the County's total costs incurred in processing, reviewing, and evaluating proposals, the County shall reimburse the difference on a reasonable pro-rata basis. Otherwise, the County shall retain all fees paid.

4.4 Virginia Freedom of Information Act

- 4.4.1 Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("VFOIA"). In accordance with Va. Code § 2.2-3705.6.11, such documents are releasable if requested, except to the extent that they contain (i) trade secrets of the private entity as defined in the Uniform Trade

Secrets Act (§ 59.1-336, *et seq.*); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the County or private entity would be adversely affected.

- 4.4.2 In order for the records specified in clauses (i), (ii) and (iii) of 4.4.1 to be excluded from release pursuant to the Virginia Freedom of Information Act, the private entity shall make a written request to the County that (a) invokes such exclusion upon submission of the data or other materials for which protection from disclosure is sought; (b) identifies with specificity the data or other materials for which protection is sought; and (c) states the reasons why protection is necessary. In addition, the proposer must clearly mark each page of its proposal that it contends is not discloseable under the VFOIA with the legend "Confidential – Not Releasable under VFOIA." The County may only protect information excluded from release by Va. Code § 2.2-3705.6.11 and will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.
- 4.4.3 The County shall determine whether a private entity's request to exclude documents from disclosure pursuant to 4.4.2 is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the County shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the County or private entity. The County shall made a written determination of the nature and scope of the protection to be afforded under these guidelines and the PPEA. Once a written determination is made by the County, the records afforded protection under 4.4.1 through 4.4.3 shall continue to be protected from disclosure when in the possession of the County and any affected jurisdiction to which such records are provided by the County.
- 4.4.4 Nothing in this 4.4 shall be construed to authorize the withholding of (a) procurement records as required by Va. Code §§ 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the County and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the

performance of any private entity developing or operating a qualifying project.

- 4.4.5 Once an agreement has been entered into, the County shall make the procurement records available upon request, in accordance with Virginia Code §§ 56-575.1:1 and 56-575.17. However, the following, if properly designated by the private entity under this Section 4.4 as "Confidential-Not Releasable under VFOIA" are not considered procurement records: (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act, Va. Code §§ 59.1-336, et. seq.; or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise. Further, costs estimates relating to a proposed procurement transaction prepared by or for the County shall not be made available for public inspection.
- 4.4.6 Any inspection of procurement records under these guidelines will be subject to reasonable restrictions to ensure the security and integrity of the records.
- 4.4.7 Except as reasonably necessary for the County, staff and consultants to review proposals, the County promises to maintain the confidentiality of information that is provided to it by a private entity pursuant to a proposal for a procurement under these procedures if the private entity follows all the steps required by paragraph 4.4. of these guidelines to designate the information as excluded from disclosure under VFOIA, and if the information is, in fact, information that is properly excluded from release under VFOIA. The Chief Administrator shall take reasonable precautions to protect the confidentiality of such information from any disclosure beyond whatever disclosure is reasonably necessary for the County, affected jurisdictions, staff, and outside consultants having a need to know the information, to carry out the procurement. Despite the County's intent to honor this promise of confidentiality, nothing contained herein shall constitute a waiver of sovereign immunity or a consent to suit, and it is a condition of submitting proposals that no cause of action, in contract or otherwise, shall arise against the County Government or School Board for any failure to maintain confidentiality of information.
- 4.4.8 Any information in a proposal that becomes incorporated into a Comprehensive Agreement or Interim Agreement with the proposer submitting it, such as by becoming an exhibit, shall become a public record releasable under VFOIA upon execution of the agreement.

4.5 Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim agreement or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds should be incorporated into planning for any PPEA project, and any PPEA procurement should comply with School Board and County fiscal policies. Virginia constitutional and statutory restrictions that apply to the County regarding expenditures of public funds shall be deemed to be incorporated into any "comprehensive agreement" into which the County enters pursuant to the PPEA and to condition the County's obligations thereunder.

4.6 Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA; provided, however that the applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in paragraph 10 of these guidelines.

5. Solicited Bids/Proposals

- 5.1 The County may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects. The County may use a two-part process consisting of an initial conceptual phase and a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA and these guidelines.
- 5.2 Prior to inviting any bids or proposals, the County shall determine pursuant to paragraph 10 of these guidelines whether to use procedures consistent with competitive sealed bidding or competitive negotiation of other than professional services, and if using competitive negotiation, indicate the justification, consistent with the PPEA and paragraph 10 of these guidelines, for proceeding in that manner, and the evaluation criteria to be used to evaluate proposals.
- 5.3 The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. In addition, the solicitation shall be advertised in Virginia Business Opportunities and posted on the Commonwealth's electronic procurement website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

- 5.4 Initial (conceptual) proposals received in response to a solicitation by the County shall be posted by the County within 10 days after their acceptance by one of the following methods: (i) posting on the County's website of a summary of the proposals and the location where copies of the proposals are available for public inspection; or (ii) publication in a newspaper of general circulation where the qualifying project will be performed of a summary of the proposals and the location where copies of the proposals are available for public inspection. The County may, in its discretion, post proposals by other means, including without limitation, on the Virginia Department of General Service's web-based electronic procurement program, commonly known as eVa., or by other methods deemed appropriate by the County so as to provide maximum opportunity to the public to inspect the proposals.
- 5.5 Subject to exclusions from disclosure in 4.4., at least one copy of the proposals shall be made available for public inspection. Unless otherwise agreed by the County and the private entity submitting a proposal, portions of the proposal properly designated pursuant to 4.4 and containing trade secrets, financial records, or other records excluded from disclosure by Va. Code § 2.2-3705.6.11 and these guidelines shall not be made available for public inspection.
- 5.6 The County will receive comments from the public on any proposals. Comments should be in writing and directed to the Chief Administrator. Comments will be accepted after the proposals have been received, and a public comment period of at least 30 days will be allowed before entry into any interim agreement or comprehensive agreement. The County, in its sole discretion, may hold a public hearing or hearings to receive public comments.

6. Unsolicited Proposals

The PPEA permits the County to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project.

The County may publicize its needs and may encourage or notify interested parties to submit proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal. Proposals received as a result of the County receiving an unsolicited proposal and then publishing a Notice of Receipt of Unsolicited Proposal will also be treated as unsolicited proposals.

To ensure the County receives the best value for any qualifying project, the County will seek and encourage competing unsolicited proposals.

6.1 Decision to Accept and Consider Unsolicited Proposal; Notice

- 6.1.1 Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers,

the County will determine whether to accept the unsolicited proposal for publication of notice and conceptual-phase consideration. If the County determines not to accept the proposal and not to proceed to publication of notice and conceptual-phase consideration, the County will return the proposal, together with all fees and accompanying documentation, to the proposer.

6.1.2 If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, the County shall:

6.1.2.1 Determine pursuant to paragraph 10 of these guidelines whether to use procedures consistent with competitive sealed bidding or competitive negotiation of other than professional services, and if using competitive negotiation, indicate the justification, consistent with the PPEA and paragraph 10 of this policy, for proceeding in that manner, and the evaluation criteria to be used to evaluate the unsolicited proposal and competing unsolicited proposals;

6.1.2.2 Determine what if any conditions that the County will authorize the Chief Administrator to place upon the proposer and any competing proposers beyond those contained in these guidelines for going forward with the unsolicited proposal and for receiving competing unsolicited proposals;

6.1.2.3 Have the County Administrator and School Superintendent confer, if the proposal involves a public school; and

6.1.2.4 Have the Chief Administrator (i) prepare a short document entitled "Notice of Receipt of Unsolicited Proposal" for purposes of publication, and (ii) prepare a lengthier document entitled "Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals" that will not be published but will be available upon request.

- a. The Notice of Receipt of Unsolicited Proposal shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement or interim agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with these guidelines and the PPEA. The notice shall include a summary of the proposal and the location where a copy of the proposal is available for public inspection. The notice shall indicate that conditions

have been imposed upon proposers for proceeding to the initial conceptual phase and inform them how to obtain the Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals containing the conditions and evaluation criteria for the procurement.

- b. Within 10 days of acceptance of the unsolicited proposal, the Chief Administrator shall post the Notice of Receipt of Unsolicited Proposal in a public area regularly used by the Board for posting of public notices and on the County's web site for a period of not less than 45 days. The Chief Administrator shall also publish the same notice at least once in one or more newspapers or periodicals of general circulation in Fauquier County, Virginia, to notify the public and any persons that may be interested in submitting competing unsolicited proposals, with the first such publication to occur at least 45 days before competing proposals are due. In addition, the notice shall be advertised in Virginia Business Opportunities and posted on the Commonwealth's electronic procurement website at least 45 days before competing proposals are due. Competing proposals may be submitted to the County Purchasing Agent during the period specified in the notice following the publication required above.
- c. The Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals shall contain the following information and shall be provided to prospective competing offers and members of the public on request:
 - (i) The instructions, terms and conditions applicable to the procurement;
 - (ii) A summary of the project proposed in the unsolicited proposal that is more detailed than the summary in the Notice of Receipt of Unsolicited Proposal;
 - (iii) The evaluation criteria to be used for the procurement (which should be approved by the County);
 - (iv) Instructions for obtaining any portions of the unsolicited proposal that are releasable; and

(v) Such other instructions and information as the Chief Administrator deems reasonable and desirable.

d. Copies of unsolicited proposals are available to the public, upon request, pursuant to the Virginia Freedom of Information Act ("VFOIA"), except as exempted from release under the PPEA and VFOIA.

6.2 Competing Proposals

Competing proposals shall be posted by the County within 10 days after their acceptance by one of the following methods: (i) posting on the County's website of a summary of the proposals and the location where copies of the proposals are available for public inspection; or (ii) publication in a newspaper of general circulation where the qualifying project will be performed of a summary of the proposals and the location where copies of the proposals are available for public inspection. The County may, in its discretion, post proposals by other means, including without limitation, on the Virginia Department of General Service's web-based electronic procurement program commonly known as eVa., or by other methods deemed appropriate by the County so as to provide maximum opportunity to the public to inspect the proposals.

6.3 Availability of Proposals for Public Inspection

Subject to exclusions from disclosure in 4.4., at least one copy of the proposals shall be made available for public inspection. Unless otherwise agreed by the County and the private entity submitting a proposal, portions of the proposal properly designated pursuant to 4.4 and containing trade secrets, financial records, or other records excluded from disclosure by Va. Code 2.2-3705.6.11 shall not be made available for public inspection.

6.4 Initial Review at the Conceptual Stage

6.4.1 Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage. Content and format requirements for proposals at the conceptual stage are found at Section 7.1.

The County reserves the right to select its own finance team, source and financing vehicle in the event any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the County, or if financing such project may impact the County's debt rating or financial position. The decision

as to whether to use the financing plan contained in any proposal (whether solicited or unsolicited) is at the County's sole discretion.

6.4.2 After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the County may determine:

6.4.2.1 Not to proceed further with any proposal;

6.4.2.2 To proceed to the detailed phase of review with the original proposal;

6.4.2.3 To proceed to the detailed phase with a competing proposal; or

6.4.2.4 To proceed to the detailed phase with multiple proposals.

However, the County may not proceed to the detailed phase with only one proposal unless it has determined in writing that only one proposer is qualified or that the only proposer to be considered is clearly more highly qualified than any other proposer.

6.5 Receipt of Public Comments

The County will receive comments from the public on any proposals, both unsolicited and competing. Comments should be in writing and directed to the Chief Administrator. Comments will be accepted after the proposals have been received and a public comment period of at least 30 days will be allowed before entry into any interim agreement or comprehensive agreement. The County, in its sole discretion, may hold a public hearing or hearings to receive public comments.

7. Proposal Preparation and Submission

7.1 Proposal Content and Format for Submissions at the Conceptual Stage

The County will require that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience, (2) project characteristics, (3) project financing, (4) project benefit and compatibility, and (5) any additional information as the County may reasonably request to comply with the requirements of the PPEA. Conceptual-phase proposals should include an executive summary of the proposal at the beginning of the proposal. This summary should contain major material items of the proposal other than price, normally including location, structures and delivery time proposed. An unsolicited proposal shall include an executive summary not designated as "Confidential-Not Releasable under VFOIA" that describes the proposed qualifying project sufficiently so that potential competitors can reasonably formulate meaningful competing proposals from a review of the summary and publicly-available information. Unless otherwise indicated in the

solicitation or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, as applicable, conceptual-phase proposals should contain the information indicated below in the format indicated below:

7.1.1 Qualifications and Experience

7.1.1.1 Identify the legal structure of the private entity making the proposal. Identify the organizational structure for the project, the management approach, and how each participant in the structure fits into the overall team. If the private entity that would be signing any comprehensive agreement is a corporation, limited liability company, limited partnership, or an entity formed especially for the project, and if the proposer is relying at all on the past experience, name, or financial statements of any other person or entity to show the private entities capabilities and responsibility, state what guaranty of performance will be provided by such other persons or entities.

7.1.1.2 Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, of the firm or consortium of firms. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.

7.1.1.3 For each firm or major subcontractor that will be utilized in the project, provide a statement, listing the firm's prior projects and clients for the past 3 years and contact information for same (name, address, telephone number, e-mail address). If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and, second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents, which are in its possession

evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project development, operation, and completion.

7.1.1.4 Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.

7.1.1.5 Provide the current or most recent financial statements of the firm or consortium of firms (audited financial statements to the extent available), and if the firm is a joint venture, limited liability company, partnership or entity formed specifically for this project, provide financial statements (audited if available) for the firm's principal ventures, members, partners, or stockholders that show that the firm or its constituents have appropriate financial resources and operating histories for the project.

7.1.1.6 Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

7.1.1.7 Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

7.1.1.8 For each firm or major subcontractor that will perform construction and/or design activities under this proposal, submit a completed Form DGS-30-168.

7.1.1.9 Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

7.1.2 Project Characteristics

7.1.2.1 Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.

- 7.1.2.2 Identify and fully describe any work to be performed by the County or any other public entity.
- 7.1.2.3 Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- 7.1.2.4 Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if an environmental and archaeological assessment has been completed.
- 7.1.2.5 Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards.
- 7.1.2.6 Identify the proposed schedule for the work on the project, including sufficient time for the County's review and the estimated time for completion.
- 7.1.2.7 Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- 7.1.2.8 Propose allocation of risk and liability, and assurances for timely completion of the project.
- 7.1.2.9 State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
- 7.1.2.10 Provide information relative to phased openings of the proposed project.
- 7.1.2.11 Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- 7.1.3 Project Financing
 - 7.1.3.1 Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment (e.g., design, construction and operation), or both.
 - 7.1.3.2 Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated

costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the County's adopted operational standards. Include any supporting due diligence studies, analyses, or reports.

- 7.1.3.3 Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach including but not limited to underwriters discount, placement agent, legal, rating agency, consultants, feasibility study and other related fees. A complete discussion of interest rate assumptions should be included given current market conditions. Any ongoing operational fees should also be disclosed as well as any assumptions with regard to increases in such fees and escalator provisions to be required in the Comprehensive Agreement.
- 7.1.3.4 Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
- 7.1.3.5 Identify any local, state or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
- 7.1.3.6 Identify any dedicated revenue source or proposed debt or equity investment on behalf of the private entity submitting the proposal.
- 7.1.3.7 Clearly describe the underlying support and commitment required by the County under your recommended plan of finance. Include your expectation with regard to the County providing its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example.

7.1.4 Project Benefit and Compatibility

- 7.1.4.1 Identify community benefits, including the economic impact the project will have on the local community in terms of amount of tax revenue to be generated for the County, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the

number and value of subcontracts generated for area subcontractors.

7.1.4.2 Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.

7.1.4.3 Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

7.1.4.4 Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.

7.1.4.5 Describe the project's compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital budget or other government spending plan.

7.1.5 Any Additional Information As The County May Reasonably Request

7.2 Proposal Content and Format for Submissions at the Detailed Stage

If the County decides to proceed to the detailed phase of review with one or more proposals, the following information, along with an executive summary of the proposal at its beginning, should be provided by the private entity unless waived by the County:

7.2.1 A topographical map (1:2000 or other appropriate scale) depicting the location of the proposed project;

7.2.2 Conceptual site plan indicating proposed location and configuration of the project on the proposed site;

7.2.3 Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;

7.2.4 Detailed description of the proposed participation, use and financial involvement of the County. Include the proposed terms and conditions for the project;

- 7.2.5 A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
- 7.2.6 Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction;
- 7.2.7 A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County or affected jurisdiction to condemn;
- 7.2.8 A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance;
- 7.2.9 A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County adopted service levels and standards;
- 7.2.10 A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects;
- 7.2.11 Identification of any known government support or opposition, or general public support or opposition for the project or financing thereof. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
- 7.2.12 Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans;

- 7.2.13 Explanation of how the proposed project would impact the County's or affected jurisdictions' development plans;
- 7.2.14 Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance;
- 7.2.15 Identification of any known conflicts of interest or other factors that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2;
- 7.2.16 Acknowledge conformance with §§ 2.2-4367 through 2.2-4377 of the Code of Virginia, the Ethics in Public Contracting Act;
- 7.2.17 Additional material and information as the County may reasonably request.

8. Proposal Evaluation and Selection Criteria

8.1 Manner of Evaluation and Use of Outside Professionals

Unless the County directs a different manner of evaluation in writing, evaluations of proposals shall be by such persons or group or committee of persons as the Chief Administrator may designate, subject to such review as the County may direct. Evaluations of proposals shall include, without limitation, analysis of the proposals' specifics, advantages, disadvantages, long-term costs, and short-term costs, using the evaluation criteria specified for the procurement. The County shall engage the services of qualified professionals not employed by Fauquier County and/or Fauquier County Public Schools, which may include an architect, professional engineer, or certified public accountant, to provide an independent analysis as part of the evaluation. Notwithstanding the preceding sentence, if the County determines that such analysis of proposals will be performed by County staff, the County need not engage such an outside professional.

8.2 Evaluation Criteria

Evaluation criteria for proposals and their relative importance should be specified in the solicitation, or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, as applicable, for the procurement concerned. Evaluation criteria may include the following factors, among others: (1) price; (2) the proposed cost of the qualifying facility; (3) the general reputation, industry experience and capability of the private entity; (4) the proposed design of the qualifying project; (5) the eligibility of the facility for accelerated selection, review, and documentation timelines

under these guidelines; (6) local citizen and government comments; (7) benefits to the public; and (8) the private entity's plans to employ local contractors and residents. If the evaluation criteria are not specified in the solicitation or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, then the criteria in the preceding sentence, along with the following items and the specified information required under 7.1 and 7.2 above, should be considered in the evaluation and selection of such PPEA proposals:

8.3 Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience will include, the following:

- 8.3.1 Experience, training, and preparation with similar projects;
- 8.3.2 Demonstration of ability to perform work;
- 8.3.3 Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
- 8.3.4 Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
- 8.3.5 Leadership structure;
- 8.3.6 Project manager's experience;
- 8.3.7 Management approach;
- 8.3.8 Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;
- 8.3.9 Financial condition; and
- 8.3.10 Project ownership.

8.4 Project Characteristics

Factors to be considered in determining the project characteristics include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.4.1 Project definition;
- 8.4.2 Proposed project schedule;
- 8.4.3 Operation of the project;

- 8.4.4 Technology;
- 8.4.5 Technical feasibility;
- 8.4.6 Conformity to State, County or affected jurisdiction laws, regulations, and standards;
- 8.4.7 Environmental impacts;
- 8.4.8 Condemnation impacts;
- 8.4.9 State and local permits; and
- 8.4.10 Maintenance of the project.

8.5 Project Financing

The County reserves the right to select its own finance team, source and financing vehicle in the event any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the County, or if financing such project may impact the County's debt rating or financial position. The decision as to whether to use the financing plan contained in any proposal (whether solicited or unsolicited) is at the County's sole discretion.

Along with the specified information required under 7.1 and 7.2 above, the following factors shall be considered in determining whether the proposed project financing allows access to the necessary capital at the lowest practical cost given the project:

- 8.5.1 Cost and cost benefit to the County;
- 8.5.2 Financing and the impact on the debt or debt burden of the County;
- 8.5.3 Financial plan including overall feasibility and reliability of plan; default implications; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies;
- 8.5.4 Estimated cost; including financing source, operating costs, etc.; and
- 8.5.5 Life-cycle cost analysis.

8.6 Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the County's, affected jurisdiction's or regional

comprehensive or development plans include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.6.1 Community benefits; including the economic impact the project will have on the County in terms of amount of tax revenue to be generated for the County, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors;
- 8.6.2 Community support or opposition, or both;
- 8.6.3 Public involvement strategy;
- 8.6.4 Compatibility with existing and planned facilities;
- 8.6.5 Compatibility with County, regional, and state economic development efforts; and
- 8.6.6 Compatibility with County's and affected jurisdiction's land use and transportation plans.

9. Comprehensive Agreements and Interim Agreements

- 9.1 Except as provided in 9.3, prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected proposer shall enter into an interim or comprehensive agreement with the County. Each agreement shall define the rights and obligations of the County and the selected proposer with regard to the project.
- 9.2 The terms of the Comprehensive Agreement shall be tailored to address the specifics of the project and shall include but not be limited to:
 - 9.2.1 The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, including, without limitation, bonds or letters of credit that comply with Virginia Code §2.2-4337 for components of the qualifying project that include construction;
 - 9.2.2 The review and approval of plans and specifications for the qualifying project by the County;
 - 9.2.3 The rights of the County to inspect the qualifying project to ensure compliance with the Comprehensive Agreement;
 - 9.2.4 The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the

project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;

- 9.2.5 The monitoring of the practices of the private entity by the County to ensure proper maintenance, safety, use and management of the qualifying project;
- 9.2.6 The terms under which the private entity will reimburse the County for services provided;
- 9.2.7 The policy and procedures that will govern the rights and responsibilities of the County and the private entity in the event that the Comprehensive Agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County;
- 9.2.8 The terms under which the private entity will file appropriate financial statements on a periodic basis;
- 9.2.9 The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
 - 9.2.9.1 A copy of any service contract shall be filed with the County;
 - 9.2.9.2 A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request;
 - 9.2.9.3 Classifications according to reasonable categories for assessment of user fees may be made;
- 9.2.10 The terms and conditions under which the County will contribute financial resources, if any, for the qualifying project;
- 9.2.11 If the private entity is a "shell" entity such as a limited liability company, limited partnership, or corporation that lacks its own substantial resources and operating history and that will depend on its members, partners, shareholders or others for resources to perform, then guarantees of performance by such private entity's principal members, etc., or other similar arrangements that adequately assure performance;
- 9.2.12 The procedures at paragraph 12 of these guidelines; and

9.2.13 Other requirements of the PPEA or provisions that the County determines serve the public purpose of the PPEA.

- 9.3 In exceptional circumstances, the County may enter into an "Interim Agreement" within the meaning of the PPEA prior to or in connection with the negotiation of a comprehensive agreement for a qualifying project when doing so clearly is in the County's best interests. The County will only enter into an "interim agreement" if it determines the qualifying project that is the subject of the agreement serves the public purpose under the criteria of Va. Code § 56.575.4.C. As a matter of policy, the County does not favor entry into "Interim Agreements" with proposers because this technique tends to reduce competition and competitive negotiations. In particular, entry into an "Interim Agreement" with a proposer without first reaching an agreement as to the material terms of a comprehensive agreement, particularly as to Guaranteed Maximum Price, scope of work, and quality work, generally would tend to eliminate most of the County's ability to obtain the best value through competitive negotiations with two or more proposers. Accordingly, use of "Interim Agreements" is strongly disfavored by the County, and their use must be fully justified. Further, as a condition for entry into any interim agreement, the County must first obtain approval of such entry from the County Board of Supervisors, and if the School Board is the responsible public entity, from the School Board.
- 9.4 After the County has negotiated an interim or comprehensive agreement with a private entity and decided to make award to the private entity, but prior to entry into such agreement, the County shall:
- 9.4.1 Post a summary of the agreement and the location where a copy of the agreement is available for public inspection. Posting shall be in the same manner as the posting of initial (conceptual) proposals specified by 5.4. A copy of the agreement shall be made available for public inspection.
- 9.4.2 Present the major business points of the agreement, including the use of any public funds, to the Board at a regularly scheduled meeting of the Board that is open to the public. When the School Board is the responsible public entity, the presentation shall be both to a regularly scheduled meeting of the School Board that is open to the public and to a regularly scheduled meeting of the Board of Supervisors of Fauquier County that is open to the public.
- 9.5 Any comprehensive agreement, interim agreement, and any amendments thereto shall first be approved by the Board of Supervisors or the School Board, whichever is the "responsible public entity", and then executed in writing by persons having the authority to do so. Any comprehensive agreement, interim agreement, and any amendments thereto entered into by the School Board shall, as a condition precedent to its effectiveness, first be approved by the Board of Supervisors. For a mixed project involving both public schools and other facilities, the Board of Supervisors

and School Board, may in their discretion, both enter into the same comprehensive agreement with the operator for the entire mixed project, with their respective responsibilities delineated in the agreement.

- 9.6 Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the agreement, the prospective private entity and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal are true and correct. Such certifications shall be made by authorized individuals who are principals of the private entity and who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective private entity shall immediately notify the County of same. Any violation of this section of the Agreement shall give the County the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available at law or in equity.
- 9.7 As required by Va. Code § 56-575.9.F., when the County enters into an agreement pursuant to the PPEA, a copy should be submitted to the Auditor of Public Accounts within 30 days thereafter at the following address:

Audit of Public Accounts
P.O. Box 1295
Richmond, VA 23218

The copy should be sent by certified-mail, return receipt requested, with a copy of the forwarding letter and return-receipt kept in the procurement file.

10. Adoption of Certain Portions of the Virginia Public Procurement Act and Use of Competitive Negotiation and Competitive Sealed Bidding Procedures

- 10.1 The provisions of the Virginia Public Procurement Act, Virginia Code § 2.2-4300, et seq., shall not apply to procurements by the County under the PPEA except as follows:
- 10.1.1 The definitions of "competitive sealed bidding" and "competitive negotiation" of other than professional services in Virginia Code § 2.2-4301 are hereby adopted;
- 10.1.2 The provisions of Virginia Code § 2.2-4310 shall apply to all PPEA procurements;

- 10.1.3 The provisions from the Ethics in Public Contracting Act, Virginia Code §§ 2.2-4367 through 2.2-4377, shall apply to all PPEA procurements;
- 10.1.4 The provisions of Virginia Code § 2.2-4343 are adopted as additional authority for parts of this policy.
- 10.1.5 The provisions of Virginia Code §2.2-4337 apply to bonds or letters of credit for any components of a qualifying project involving construction.
- 10.2 Before accepting any unsolicited proposal or before issuing any solicitation for proposals, the County will determine whether it will proceed to evaluate proposals using either:
 - 10.2.1 The County's normal procedures for the evaluation of bids resulting from "competitive sealed bidding", as defined in Virginia Code § 2.2-4301, with award to the lowest responsive and responsible private entity. Evaluation may include special qualifications of private entities, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; or
 - 10.2.2 The County's normal procedures for the evaluation of proposals resulting from the procurement of other than professional services through "competitive negotiation", as defined in Virginia Code § 2.2-4301. As such, selection shall typically be made of two private entities deemed to be fully qualified and best suited among those submitting proposals. Negotiations shall then be conducted with each of the private entities so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each private entity so selected, the County shall select the private entity, which, in its opinion, has made the best proposal. Should the public body determine in writing and in its sole discretion that only one private entity is fully qualified, or that one private entity is clearly more highly qualified than the others under consideration, negotiations may be limited to that private entity.
- 10.3 The County may proceed using competitive negotiation procedures described in 10.2.2 above only if it first makes a written determination that doing so is likely to be advantageous to the County and the public based upon either (i) the probable scope, complexity or urgency of need, or (ii) the risk sharing, added value, or debt or equity investments proposed, or (iii) the increase in funding, dedicated revenue source or economic benefit from the project that would otherwise not be available.

11. Terms and Conditions on Proposal Submission

11.1 The following terms and conditions apply to submission of any proposals to the County pursuant to the PPEA, and by submitting any proposal to the County, whether unsolicited, competing unsolicited, or solicited, the private entity submitting the proposal agrees to them:

11.1.1 Neither these guidelines, nor any request or solicitation, nor the County's receipt or consideration of any proposal shall create any contract, express or implied, any contractual obligation by the County to any proposer, or any other obligation by the County to any proposer. The County makes no promise, express or implied, regarding whether it will enter into an interim and/or comprehensive agreement with any proposer or regarding the manner in which it will consider proposals. The County will only be bound by the terms of any interim and/or comprehensive agreement(s) into which it enters should it choose to enter into any such agreements;

11.1.2 The County will not be responsible for any expenses incurred by a proposer in preparing and submitting a proposal, or in engaging in oral presentations, discussions, or negotiations with the County;

11.1.3 Proposers may be required to make an oral presentation or oral presentations of their proposal in Fauquier County at their own expense. The County may request the presence of proposers' representatives from their development, financial, architectural engineering and construction teams at these presentations. The County will schedule the time and location for these presentations. By submitting its proposal, the proposer agrees to make these representatives reasonably available in Fauquier County;

11.1.4 The County reserves the right to waive any informalities with respect to any proposal submitted;

11.1.5 The County reserves the right to accept or reject any and all proposals received, in whole or in part, without explanation and to negotiate separately in any manner necessary to serve the best interests of the County. Any procurement under this policy may result in multiple awards to multiple proposers;

11.2 The provisions of this paragraph 11 of this policy shall apply automatically to all PPEA procurements by the County.

11.3 The County will not discriminate against an proposer because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

12. Disputes, Claims, and Other Matters Arising Under or Relating to any Interim/Comprehensive Agreement

The following provisions apply to any disputes, claims or other matters (collectively "Claim") arising under or relating to any agreement entered into pursuant to the PPEA by the County on the one hand, and any private entity ("Contractor"), on the other hand. Disputes, claims and other matters in question between the parties arising under or relating to an interim and/or comprehensive agreement shall only be resolved as follows:

- 12.1 The Contractor shall give the County written notice of any Claim for any additional compensation, damages, or delay within ten (10) days of the beginning of the occurrence of the event leading to the Claim being made and shall submit the actual Claim and any supporting data within thirty (30) days after the occurrence giving rise to the Claim ends. The written notice shall be a document addressed to the County that clearly states Contractor's intention to make a Claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by the County. The Claim must be certified under oath as true and correct by a principal of Contractor. The "occurrence" means the condition encountered in the field giving rise to the Claim and not a later dispute about payment for that condition. Claims of time impacts will be resolved as they occur, and no Claims of cumulative impacts or deferral of claimed time impacts will be allowed. Complete satisfaction of this subparagraph 12.1 is an absolute prerequisite for Contractor to pursue a Claim, dispute, or other matter arising under or relating to the agreement. Failure by the Contractor to satisfy this paragraph 12.1 shall constitute a waiver by the Contractor of the Claim for which such failure occurs.
- 12.2 The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Fauquier County, Virginia. Should the dispute, claim or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than 90 days after mediation is requested by a party, either party may proceed in accordance with 12.3 below. However, nothing in this paragraph 12.2 excuses the Contractor from compliance with all the provisions of 12.1.
- 12.3 If the procedures of 12.2 have been followed, but, more than 90 days have passed since a party has invoked mediation, and the dispute, claim or other matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of Fauquier County, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of Fauquier County, Virginia, and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
- 12.4 Nothing in paragraphs 12.2 and 12.3 shall prevent a party from seeking temporary injunctive or other temporary equitable relief in Fauquier County Circuit Court if circumstances so warrant.

- 12.5 In the event of any dispute, claim, or other matter in question arising, the Contractor shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any claim, dispute or other matter in connection with the payments of moneys, the Contractor shall be entitled to receive payments for non-disputed items, subject to any right of set-off by the County.
- 12.6 These procedures and the provisions of the Interim and/or Comprehensive Agreement supersede any right at common law by Contractor for a claim of material breach or for rescission of the agreement.
- 12.7 These procedures shall be deemed automatically incorporated by reference into any agreement entered into by the County Government, the School Board, or both the County Government and the School Board.

13. Use of Public Funds

Virginia constitutional and statutory requirements, as they apply to appropriation and expenditure of public funds, apply to any comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural agreements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects. Virginia constitutional and statutory restrictions that apply to the County regarding expenditures of public funds shall be deemed to be incorporated into any Interim and/or Comprehensive Agreement into which the County enters pursuant to the PPEA and to condition the County's obligations thereunder.

14. Protests of PPEA Procurements

The following are the exclusive procedures for contesting or challenging (protesting) (a) the terms or conditions of any solicitation of proposals by the County pursuant to the PPEA, (b) nonselection of a PPEA proposal for further consideration, and (c) the selection of any PPEA proposal for entry into an Interim and/or Comprehensive agreement or the entry into an Interim and/or Comprehensive agreement under the PPEA:

- 14.1 Any protest to any term or condition of a solicitation must be made in writing and delivered to the Chief Administrator so it is received by the Chief Administrator before proposals are due under the solicitation. Otherwise, any such protest shall be deemed to be waived.
- 14.2 A protest of a County decision not to select a PPEA proposal for further consideration may only be made by the entity who submitted the proposal at issue. A protest of a County decision to select a PPEA proposal for entry into an agreement or to enter into an agreement may only be made by an entity who submitted a proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the County's decision. Protests shall only be granted if (1) the protester has complied fully with this paragraph 14 and there has been a violation of

law, this policy, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.

- 14.3 Any entity desiring to protest a County decision not to select a PPEA proposal for further consideration, to select a PPEA proposal for entry into an agreement, or to enter into an agreement shall submit the protest in writing and deliver it so that it is received by the Chief Administrator not later than 5 business days after announcement of the decision. Otherwise any such protest shall be deemed to be waived.
- 14.4 The Chief Administrator shall issue a written decision on a protest within 10 days of its receipt by the Chief Administrator.
- 14.5 If the protest is denied, the protester may only appeal the denial or otherwise contest or challenge the procurement by then filing suit in the Circuit Court for Fauquier County and serving the County with such suit within 10 days of such denial. Otherwise, the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
- 14.6 The exclusive relief allowed if a protest is granted is to void the decision being protested. Under no circumstances will any monetary relief be allowed.
- 14.7 Strictly following these procedures shall be a mandatory prerequisite for any challenge of any nature to a decision by the County relating to terms and conditions of a PPEA solicitation, nonselection of a PPEA proposal for further consideration, selection of a PPEA proposal, or entry into an interim and/or comprehensive agreement. A failure to follow all these procedures strictly shall constitute a waiver of any right to challenge judicially a County decision (a) as to terms or conditions in a PPEA solicitation, (b) not to select a PPEA proposal for further consideration, (c) to select a PPEA proposal, or (d) to enter into an interim and/or comprehensive agreement.

15. Timelines for Selecting Proposals and Negotiating Agreements and Accelerated Timelines for Priority Qualifying Facilities

- 15.1 Normal expected timelines for selecting proposals and negotiating an interim agreement or comprehensive agreement are set out at Appendices A and B hereto. Appendix A sets out the normal expected timeline for a PPEA procurement initiated by an unsolicited proposal. Appendix B sets out the normal expected timeline for a PPEA procurement solicited by the County.
- 15.2 For projects deemed a priority by the County, the portion of timelines related to selection, review, and documentation may be accelerated.

15.3 The County should generally adhere to these timelines in PPEA procurements, but the County may deviate from them when it is in their interests to do so.

16. Proposers' Agreement to Terms and Conditions of These Guidelines

The County shall require as a condition of accepting any proposal for consideration that its proposer agree to be bound by all the terms and conditions of these guidelines. Proposers shall submit with any proposal the certification that is set out at Appendix C hereto.

APPENDIX A

Projected Procurement Timeline for Fauquier County/School Board PPEA Procurement Initiated By Unsolicited Proposal

Activity Number	Date	Activity	Guidelines Reference
1	D	Receipt of Unsolicited Proposal	6.1.1
2	D+45	Decide whether to accept Unsolicited Proposal, whether to use competitive negotiation, what conditions to impose, and whether the proposer's request to exclude information from disclosure is necessary	6.1.2.1 and 6.1.2.2, 4.4.3
3	D+55	Prepare Notice of Unsolicited Proposal, Receipt of Unsolicited Proposal, and Post and Publish	6.1.2.3
4	D+115	Receive Competing Conceptual-Phase Proposals	6.2
5	D+120	Determine whether proposers' requests to exclude information from disclosure are necessary	4.4.3
6	D+125	Post Competing Conceptual-Phase Proposals. Receive public comments on unsolicited and competing Conceptual-Phase Proposals.	
7	D+175	Evaluate Conceptual-Phase Proposals, decide whether to proceed. If proceeding, select proposers to invite to submit, and invite	6.2.2

Activity Number	Date	Activity	Guidelines Reference
		submission of Detailed-Phase Proposals	
8	D+205	Receive Detailed-Phase Proposals	
9	D+120	Determine whether proposers' requests to exclude information from disclosure are necessary	4.4.3
10	D+250	Evaluate Detailed-Phase Proposals, conduct interviews, and select proposers for negotiation of agreement	
11	D+295	Negotiate Interim Agreement or Comprehensive Agreement, select awardee	
12	D+315	Post agreement for public	
13	D+345	Present business points of agreement at board meeting(s) open to public	
14	D+350	Obtain approvals by School Board and Board of Supervisors	

APPENDIX B

Projected Procurement Timeline for Fauquier County/School Board PPEA Procurement Solicited By Request for Proposals (“RFP”)

Activity Number	Date	Activity	Guidelines Reference
1	D	Initiate procurement under PPEA. Decide whether to use competitive negotiation and issue RFP.	5.1 & 5.2
2	D+45	Receive Conceptual-Phase Proposals	
3	D+50	Determine whether proposers' requests to exclude information from disclosure are necessary	4.4.3
4	D+55	Post Conceptual-Phase Proposals. Receive public comments	
5	D+105	Evaluate Conceptual-Phase Proposals and decide whether to proceed. If proceeding under PPEA, select proposers to invite to submit, and invite submission of Detailed-Phase Proposals	
6	D+135	Receive Detailed-Phase Proposals	
7	D+140	Determine whether proposers' requests to exclude information from disclosure are necessary	4.4.3
8	D+180	Evaluate Detailed-Phase Proposals, conduct interviews, and select	

Activity Number	Date	Activity	Guidelines Reference
		proposers for negotiation of agreement	
9	D+225	Negotiate Interim Agreement or Comprehensive Agreement. Select awardee	
10	D+245	Post agreement for public	
11	D+275	Present business points of agreement at board meetings open to public	
12	D+280	Obtain approvals by School Board and Board of Supervisors	

Note: Considerable planning before Step 1 is required to determine the County's needs for a project and to state them in an RFP.

APPENDIX C

Proposer's Certification

Proposer's Name: _____

Proposer's Address

Proposer's:

Telephone No.: _____

Facsimile No.: _____

E-mail Address: _____

Proposer's or Proposer's Contractor's Virginia Class A General Contractor's License Number

Proposer's or Proposer's Architects and Engineers Virginia Registration Numbers:

After first being placed under oath, I hereby certify that I have authority to submit this proposal on behalf of the proposer whose name appears above, that I am a principal of the proposer, that the proposer hereby agrees to all of the terms and conditions in the Fauquier County Government and Public Schools Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, that neither the proposer nor any member of its team or their principals is currently suspended or debarred from public contracting by any federal, state or local government entity, that I have taken reasonable steps to ascertain the accuracy of all the information contained in this proposal and this certification, and that the information in this proposal and certification is accurate to the best of my knowledge or information and belief.

Signature

Printed/Typed Name

Title (Principal of Proposer)

Commonwealth of Virginia :
: to wit
County/City of _____ :

On _____, 2006, _____, (same name as above) appeared before me,
and after satisfying me of his/her identity and after being placed under oath, swore to the
truthfulness of the above statement.

Notary Public

My commission expires: _____

(If applicable) the proposer acknowledges receipt of the following agenda:

Addendum No.: _____	Dated: _____
Addendum No.: _____	Dated: _____
Addendum No.: _____	Dated: _____
Addendum No.: _____	Dated: _____